Supreme Court, U.S.
FILED
OCT 20 1997
CLERK

(3)

No. 97-422

**In The**
**Supreme Court Of the United States**
**October Term, 1997**

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BENJAMIN M. ANDERSON,
Petitioner,

v.

SAMUEL W. PANOS,
an individual;
KATHRYN DOBRINIC,
in individual capacity;
MICHEAL SHEELEY,
in individual capacity;
JAMES VAZZI,
in individual capacity;
BOATMEN'S NATIONAL BANK OF CENTRAL ILLINOIS (Now NATIONS BANK);
COFFEEN STATE BANK AND TRUST COMPANY (Now ILLINI BANK), a Corporation;
Respondents.

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REPLY TO BRIEF IN OPPOSITION

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David M. Kahn
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27pp

## QUESTIONS PRESENTED FOR REVIEW

1. Whether a person who pleads guilty to a misdemeanor and is placed on conditional discharge is deemed in custody for purpose of being able to apply for a writ of habeas corpus.

(Petitioner adopts Respondents Question 1)

2. Whether a person who was illegally convicted, but who was never been able to bring a habeas corpus action because he was never in custody, is that person required by the holding of Heck v. Humphrey, to have the conviction set aside before pursuing a Title 42 §1983 claim, for money damages for serious constitutional violations such as 1) Guilty plea being obtained by coercion and duress, 2) An alleged totally false and fabricated transcript of the sentencing hearing which transcript shows that he was advised of various constitutional and procedural rights 3) Payment of restitution that in no way or manner is related to the offense charge with 4) Search without consent or search warrant of the property of the person convicted as well as the search of separate property of his father and adult daughter, and further the concealing of the search of these properties, 4) undisputed payment of substantial fine and restitution, as part of the criminal conviction.

3. Whether Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.E.d.2 383 (1994) bars a suit under 42 U.S.C. §1983 which allegedly, does not impeach the validity of the plaintiff's conviction which has not been vacated.

(Petitioner adopts Respondents Question 3)

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## JURISDICTION

This Court has jurisdiction to review by writ of certiorari, the April 4, 1997, Judgement of the Court of Appeals (28 U.S.C. § 1254(1).) The judgement concerns a cause of action under 42 U.S.C. § 1983 for money damages where the underling conviction has not been set aside or otherwise invalidated.

## ILLINOIS SUPREME COURT RULE 402 AND COMMENTARIES

Illinois Supreme Court Rule 402, set forth in Illinois Revised Compiled Statutes provides in part:

**Rule 402. Pleas of Guilty**

In hearing on pleas of guilty, there must be substantial compliance with the following:

(a) **Admonitions to Defendant.** The court shall not accept a plea of guilty without first, by addressing the defendant personally in open court, informing him of an determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law including when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences.

(3) That the defendant has the right to plead not guilty or to persist in that plea if it has already been made, or to plead guilty; and

(4) That if he pleads guilty there will not be a trial of any kind, so by pleading guilty he waives the right to a trial by jury and the right to be confronted with the witnesses against him.

(b) **Determining Whether the Plea is Voluntary.** The court shall not accept a plea of guilty without first determining that the plea is voluntary. If the tendered plea is the result of

a plea agreement, the agreement shall be stated in open court. The court, questioning the defendant personally in open court, shall confirm the terms of the plea agreement, or that there is no agreement, and shall determine whether any force threats of any promises, apart from a plea agreement, were used to obtain the plea.

(c) Determine Factual Basis for Plea. The court shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea.

Portions of Committee (appointed by the Illinois Supreme Court) Comments revised January 5, 1981 set out after Supreme Court Rule 402, Smith Hurd Annotated Illinois Statutes, are as follows:

> "...The Supreme Court of the United States had recently held that it is a violation of due process to accept a guiltily plea in State criminal proceedings without an affirmative showing, placed on the record, that the defendant voluntarily and understandingly entered his plea of guilty. (Boykin v. Alabama (1969) 395 U.S. 238).....
>
> Two major objectives of new Rule 402 are to: (1) to insure compliance with the Boykin requirements and (2) to give visibility to the plea agreement process and thus provide the review court with a record containing an accurate and complete account of all relevant circumstances surrounding the guilty plea. See United States v. Jackson, 390 F.2d 130 (7th Cir. 1968).
>
> Paragraph (a) sets forth the admonitions which must be given to the defendant to insure that his guilty plea is intelligently and understandingly made, as required by Boykin. Subparagraph (1) requires that the defendant be informed of the nature of the charge..... Subparagraph (2) requires that the

defendant also be informed of the minimum and maximum sentences prescribed by law. Sub-paragraphs (3) and (4) cover the requirements enumerated in Boykin, namely the record on a guilty plea affirmatively show a waiver of "three important federal rights"; the privilege against self-incrimination; the right to trial by jury; and the right to confront's one accusers.

## REPLY TO NEW MATTERS THEREIN RESPONDENTS' BRIEF IN OPPOSITION

Petitioner's of Writ of Certiorari, alleges that he never appeared in Montgomery County Circuit Court criminal case 93-CF-10, contrary to purported transcript of the sentencing hearing of January 12, 1995, see appendix pages 1-13.

If Respondents had referred to the transcript to proof that Petitioner did in fact appear before the sentencing Judge, this would not constitute a new matter --- however, Respondent in their summary of facts, go beyond old matters in making detailed references to specific portions of the transcript for purpose of showing what sentencing Judge said in advising Petitioner of his constitutional rights. Only quoting the transcript for what the sentencing Judge said is misleading without also pointing out what constitutional rights the transcript evidences and shows Petitioner was not advised of.

An additional reason for replying to references in the transcript, is that on August 21, 1997, the sentencing Judge, issued a Certificate of Correctness regarding the transcript of January 12, 1995. Such Certificate of Correctness was incorporated into the original transcript and is page number 13 of the transcript, and thus became part of the transcript rather than being entered as a separate court order. Such Certificate of Correctness was not attached to writ of certiorari solely because Petitioner was unaware of same until after this writ of certiorari was filed. Such Certificate was entered

without notice to Petitioner and without being entered in the Montgomery County Circuit Docket Sheets for case No 93-CF-10. Further, such Certificate of Correctness was not indexed when the circuit court's file was transferred to the Fifth District Illinois Appellate Court, Appellate Case No. 5-97-0487. Petitioner has filed in the aforesaid appellate court a motion to set aside or strike said certificate of correctness, but to date same has not been ruled on.

The transcript of sentencing hearing of January 12, 1995, included in Appendix herewith, at pages 1-13 shows Petitioner was not advised of his right to confront witnesses and right against self-incrimination, rights necessary for fundamental fairness in accordance with Boykin v. Alabama, 395 U.S. 238, 89 S.Ct 1709, 23 L.Ed2d. 374, (1969).

Illinois Supreme Court Rule 402, was made to secure compliance with rights guaranteed by Boykin v. Alabama, supra. Rule 402 subparagraphs (3) & (4) specify the requirements enumerated in Boykin, namely that the record of a guilty plea affirmatively show a waiver of "three important federal rights" i.e.: right to trial by jury; and right to confront one's accusers. Nowhere in subparagraphs (3) and (4) is the privilege against self-incrimination mentioned --- however, set forth on pages, one and two of this brief the commentary to Rule 402 states such right is embraced in advising a Defendant of his right to a jury trial and right to confront one accuser(s). The transcript is silent on the right to confront one accusers, therefore it is also silent on constitutional right against self incrimination.

Respondents raise a new matter on page three of their brief, stating:

> "Petitioner acknowledged he understood that by signing a written jury waiver and guilty plea, he was waiving his right to trial, pleading guilty and understood what his penalty would be." (R.Doc. 7,

Plaintiff's Exhibit D, p. 7, appendix page 14.

Petitioner acknowledges signing jury waiver and guilty plea. However waiver & plea is not sufficient to waive constitutional rights even if the waiver of these right are set forth in detail in a written plea agreement. People v. Cummings, 7 Ill. App. 3d 306, 287 N.E. 2d 291, (2d Dist. 1972).

As to Respondents claim that Petitioner was advised of his constitutional rights; It is noted not only does the transcript show Petitioner was not advised of his constitutional rights, but also that he was not advised of rights that are closely related thereto, i.e. failure of sentencing court to obtain a factual basis as to why restitution should be paid for bank loans not related to the criminal charge against the Defendant. In People v. Cummings, supra page 307 at 7 Ill. App.3d, in recognizing that Illinois Supreme Court Rule 402 is analogous to the procedural safe guards required by McCarthy v. United States, 394 U.S. 459, 22 L.Ed.2d 418, 89 S.Ct. 1666, (1969), and Federal Rule 11 states:

> "***The court***shall not accept such plea [plea of guiltily]***without first addressing the defendant personally and determining that the plea is made voluntarily with understanding the nature of the charge and the consequence of the plea***. "The court shall not enter judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea." "The necessity for personal admonishment by the court and the need for a factual determination in support of the plea was recognized by the United States Supreme Court when it interpreted Rule 11 in McCarthy v. United States, 394 U.S. 459,, 89 S. Ct. 1166, 22 L.Ed.2d 418 (1969). *** "Moreover because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntarily unless the defendant possesses an understanding of

> the law in relation to the facts." "Thus in addition to directing the judge to inquire into the defendant's understanding of the nature of the charge and the consequences of his plea, Rule 11 also requires the judge to satisfy himself that there is a factual basis for the plea***Requiring this examination of the relation between the law and the acts defendant admits having committed is designed to "protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge." "22 L.Ed.2d 425, 426 "The same underlying principles applicable to Rule 11 found in McCarthy, supra are also found in Illinois under Rule 402. (Citation omitted)

In the case at bar, nowhere in the transcript, appendix pages 1-13 is there set forth any factual basis for including two different Banks, regarding restitution for loans that were unrelated to the original felony indictment and unrelated to the reduced misdemeanor charge. While not certified as an issue to the appellate Court, there being no causal relationship between the sentence and restitution was called to the attention of the Appellate and District Court, Petitioners Brief to the Seventh Circuit, on page 12. In the transcript of hearing before Judge Richards Mills, on June 4 1997 at page 35 lines 6 though 20 there being no basis for restitution was set forth by Petitioner's counsel.

In the case at bar the Petitioner was not advised of the consequences if he pled guilty at the sentencing hearing contrary to the express provisions of Rule 402 sub-paragraph(a) 2, on page 2 of this brief, providing that he be advised of the minimum maximum sentence. Further as noted in Cummings, supra the Court needs to explain to the Petitioner the consequences of his plea, without being advised as to the minimum-maxim sentence the Defendant could not understand the consequences of this plea.

Due to ineffective assistance of counsel by Kahn, failure of the sentencing Judge not advising the Petitioner of his constitutional and related guarantees, were not brought to the attention of either the District or Seventh Circuit Appellate Court. Ineffective assistance of counsel is evidenced by the sanctions imposed on Kahn. But under the plain error doctrine, as set forth in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d 274 (1969) this court can still review if Petitioner intelligently and knowingly waived his right to plead not guilty. In Boykin, at page 242, it is stated:

> "It was error, plain on the face of the record, for the trial judge to accept petitioner's guilty plea without an affirmative showing that it was intelligent and voluntary. That error, under Alabama procedure, was properly before the court below and considered explicitly by a majority of the justices and is properly before us on review."

In the case at bar, as in Boykin, issue of intelligent and voluntary waiver was not considered by the trial Court. Unlike Boykin, the Seventh Circuit Appellate Court did not consider, if Petitioner's guilty plea was intelligently made in light of 1) failure to give two of the three fundamental admonishments, (right to confront witness, right against self incrimination), 2) If there was a factual basis made for paying restitution as part of the sentence, 3) If Petitioner's failure to be advised of minimum-maximum sentence, by sentencing Judge, made his plea resulted in his being unaware of the legal consequences of a plea of guilty. An unpublished United States District Court opinion (prepared by Judge Richard Mills who issued summary Judgment against Petitioner) Central District of Illinois Order, United States v. Williams, No. 95-30045, pages 6 and 7:

> "[In the Seventh Circuit]" "a defendant may not collaterally attack a prior state conviction at sentencing unless the conviction is presumptively void -- that is,

> the lack of constitutionally guaranteed procedures is plainly detectable from the face of the record". United States v. Hoggard, 61 F.3d 540, 542 (7th Cir. 1995). ....."Importantly, where no record exists from a challenged conviction, "the court may accept testimony establishing the 'custom and practice' of the trial court in following proper procedures.

Further in United States v. Gallman, 907 F.2d 639 (7th Cir. 1969), after stating that the Defendant has the burden of proof to proof that he was not advised of his constitutional rights at sentencing, the court notes in footnote 4 on page 643, "In some circumstances, for example where the certified record of conviction indicates on its face that conviction was unconstitutional the defendant's burden is automatically met and the defendant need introduce no evidence at all." In the case at bar, Petitioner should not have to proof he was not advised of his constitutional rights since failure to advise him of his constitutional rights is apparent from the record, (transcript).

Although Williams, and Hoggard cases, supra, were concerned with constitutional right to counsel, and were in content of whether prior conviction could be considered in assessing punishment, the rational of these cases are applicable to the case at bar in pondering other constitutional rights. In the case at bar, the transcript of the sentencing hearing certified correct by the sentencing Judge, shows there was a failure to advise of two aforesaid fundamental constitutional rights.

Also in regards to plain error the Appellate Court in U.S. v. Hoggard, supra, states on page 543:

> "Arguments made for the first time on appeal are reviewed for plain error only (citation omitted). As already noted, state judicial proceedings are accorded a presumption of regularity"

In the case at bar, silence of the record shows that the Petitioner was not advised of two fundamental constitutional rights, thus, no such presumption of regularity applies, and review by this Court for plain error is appropriate.

Even if the plain error doctrine is applicable, and assuming also that the Court finds that Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), is applicable to bar collateral attack, the plain error doctrine will only result in this case being remanded in part if the Seventh Circuit's interpretation that a suit is not barred under 42 U.S.C. Section 1983, for a constitutional violation that does not impeach the validity of the conviction, applies. In Schilling v. White, 58 F.3d 1081 (6th Cir. 1995), at 1086 the contrary Third Circuit's interpretation is set forth, to wit:

> "The Seventh Circuit misreads Heck. The fact that a Fourth Amendment violation may not necessarily **cause** an illegal conviction does not lessen the requirement that a plaintiff show that a conviction was invalid as an **constitutional injury**. The Court explicitly foreclosed this line of reasoning in Heck, when it is concluded that because an illegal seizure does not automatically render a conviction invalid, an illegal seizure does not alone create a injury compensable under § 1983."

## CONCLUSION

In the interest of justice and for the reasons as set forth herein and as set forth therein Petitioner's writ of certiorari, the petition for writ of Certiorari should be allowed.

Respectfully submitted

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STATE OF ILLINOIS
IN THE CIRCUIT COURT FOR
THE FOURTH JUDICIAL CIRCUIT COURT
MONTGOMERY COUNTY

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | No. 93-CF-10 |
| | ) | |
| BENJAMIN M. ANDERSON, a/k/a TERRY L. CAIN, a/k/a BUDDY BLAYLOCK, | ) | |
| | ) | |
| Defendant. | ) | |

**HEARING ON NEGOTIATED PLEA PROCEEDINGS**

Before: HONORABLE DAVID W. SLATER
Associate Judge

On: January 12, 1995

**FILED**
JUL 30 1997
DANIEL B. BILLINGTON
Circuit Court Clerk
4 TH Judicial Circuit

BE IT REMEMBERED that on to-wit: January 12, 1995, the above-entitled cause held as follows, to wit:

TED MERANO CSR
OFFICIAL COURT REPORTER
303 West Summer Street
Hillsboro, Illinois 62049

APPEARANCES:

KATHRYN DOBRINIC
State's Attorney
Montgomery County
Courthouse
Hillsboro, Illinois

on behalf of the State,

SAMUEL PANOS
Attorney At Law
7531 Forsyth
Clayton, Missouri

on behalf of the Defendant.

January 12, 1995 - 11:00 A.M.
Hearing in open court.

THE COURT: 93-CF-10, People versus Terry Cain also known as Buddy Blaylock also known as Benjamin Anderson.

MRS. DOBRINIC: Mr. Anderson is present with his Counsel. This is set for pretrial. I believe today we have a negotiated plea to present to the Court for your consideration.

THE COURT: Terms?

MRS. DOBRINIC: Your Honor, it's my understanding the Defendant will enter a plea of guilty as to Count II, which I would be filing instanter. That count would allege the offense of Theft Less than $300.00 in Value. In exchange for a plea of guilty to that charge Count I

of the indictment would be dismissed against the Defendant. And he would be sentenced to two years, 24 months conditional discharge. He would have the customary terms and conditions. We have prepared an Order in advance deleting some of those terms. There would be a special condition that he would pay a fine of $1,000.00 instanter; he would pay court costs instanter; he would pay restitution to Boatmen's Bank of Hillsboro, Illinois in the amount of $930.72 instanter; he would be ordered to pay restitution to Illini Bank of Coffeen, Illinois in the amount of $6,000.00. The balance of his bond which is up right now not covering those first three items would be applied to this restitution to the Illini Bank. Then he would be ordered to pay the balance in 24 equal monthly payments. Those payments to start the 1st day of March and due the 1st day of each month thereafter until paid in full. The Defendant would also be ordered to serve 26 days in the Montgomery County Jail and he would be given credit for 26 days served.

This is a case, your Honor, that involves the Defendant's use of the name Terry Cain in executing documents to J.I. Case to obtain possession and financing of a Uniloader which was ultimately recovered from the Defendant and returned to J.I. Case.

It's the understanding of the parties, I believe, and I want to state this in open court that these lending institutions, Boatmen's Bank and Illini Bank, may claim other amounts from the Defendant such as expenses for collection or attorney's fees or interest, which we are not saying by this Order that is the total amount due. But, that is the total amount this Defendant owes under our Order here.

THE COURT: Have they been notified?

MRS. DOBRINIC: Yes. I obtained, I spoke to Mr. Long this morning who is the attorney for Boatmen's Bank. I believe there was a matter before the Court this morning on that, may be. So, Boatmen's Bank is aware. I did not speak with the person I was dealing with normally on the Illini Bank matter, but these, those are the figures they gave us to obtain as restitution on this. Also, your Honor, I don't have authority to make any representations about what might or could or may not happen as far as Federal laws are concerned and so this plea doesn't incorporate any kind of understanding on any possible violation of a Federal statute.

THE COURT: Prior record?

MRS. DOBRINIC: According to the printout that I have the Defendant has no prior record and perhaps he should be

asked to make a representation to that fact in court before the Court accepts the plea.

THE COURT: Is this going to be reporting to anybody?

MRS. DOBRINIC: No, sir, your Honor.

THE COURT: Are those the terms of the plea as you understand them, Counsel?

MR. PANOS: Yes, your Honor. And Mr. Anderson has authorized me to withdraw his plea of not guilty and enter a plea of guilty to the information filed as amended under those terms and conditions.

THE COURT: Do you have the new information?

MR. PANOS: No, I don't.

THE COURT: Do you have the information?

MRS. DOBRINIC: You have to change one thing on there, the cite. I just need to change the cite. It should read 16-I(a)(2)(A), which talks about obtaining by deception instead of obtaining or exerting unauthorized control. He is charged with, the wordage is correct, just the cite isn't.

THE COURT: Is that all right?

MR . PANOS: That is fine.

MRS. DOBRINIC: Your Honor, at this time I am tendering the information, Count II.

THE COURT: Mr. Anderson, you understand you are

charged with in Count II now alleging the offense of Theft Less than $300.00?

MR. ANDERSON: Yes, your Honor.

THE COURT: Do you understand that if you plead guilty to that charge you are going to be placed on 24 months conditional discharge, normal terms to apply. In addition thereto you will be ordered to pay a fine of $1,000.00, plus costs, make restitution in the amount of $930.72. Who did you say that was to be paid to?

MRS. DOBRINIC: Yes, your Honor, that was to Boatmen's Bank. Boatman's Bank of Hillsboro.

THE COURT: Boatmen's Bank. And the sum of $6,000.00 to Illini Bank.

MRS. DOBRINIC: Correct.

THE COURT: The bond will be applied and the balance due in 24 equal monthly installments beginning March 1, 1995. You will be sentenced to 26 days in the Montgomery County Jail and given credit for 26 days served. Do you understand the teems of the plea?

MR. ANDERSON: Yes, your Honor.

THE COURT: Do you understand that you have a right to a trial by jury which you give up if you plead guilty?

MR. ANDERSON: Yes, sir, your Honor.

THE COURT: I have before me a Jury Waiver and Plea of Guilty to the Offense of Theft (Under $300.00); is that your signature?

MR. ANDERSON: Yes, sir.

THE COURT: Do you understand by signing that you are giving up any right you have to a trial and you are pleading guilty to the charge and you understand what the penalty is going to be?

MR. ANDERSON: Yes, sir.

THE COURT: That is what you want to do, is that correct?

MR. ANDERSON: Yes, your Honor.

THE COURT: Anybody forcing you to do this, make any threats or promises to get you to do this?

MR. ANDERSON: No, your Honor.

THE COURT: Do you understand the State would have to prove you guilty beyond a reasonable doubt before you would be found guilty of any offense?

MR. ANDERSON: Yes, sir, your Honor.

THE COURT: Okay, you also understand that the State is dismissing Count I as part of this plea and that this will be entered, the plea will be entered in the State case, but if the Federal authorities decide to file charges against you for a violation of Federal law this is not a bar to them

doing that?
MR. ANDERSON: Yes, your Honor.
THE COURT: And you still want to proceed with your plea of guilty?
MR. ANDERSON: Yes, sir, your Honor.
THE COURT: I, I Will find that you knowingly and voluntarily enter this plea of guilty.
Factual basis for the plea?
MRS. DOBRINIC: Your Honor, if this case were to proceed to trial the State would present the testimony of witnesses who would indicate that on or about March 10, 1990, Defendant was present in Montgomery County, Illinois at a time that he executed certain documents with J.I. Case, by way of a business in this county known as Voils Brothers International. And by doing so he obtained possession of a J.I. Case Uniloader, Model # 1840. And that he did so by deception using the name of Terry Cain on those documents.
THE COURT: Is that essentially what occurred, Mr. Anderson?
MR. ANDERSON: Yes, your Honor.
THE COURT: Court will find there is a factual basis for the plea.
You understand if the plea is accepted you are not going to have a right to have a trial, you can't come back

in the future and ask for a trial without asking for permission to withdraw your plea of guilty. And you understand there is no guarantee that will be granted?

MR. ANDERSON: Yes.

THE COURT: And you understand if your plea is withdrawn the matter will be reset for trial and the State has the right to reinstate the other charges that were dismissed as a part of this negotiation?

MR. ANDERSON: Yes, your Honor.

THE COURT: You still want to proceed with your plea, is that correct?

MR. ANDERSON: Yes, your Honor.

THE COURT: Okay, you will be found guilty of Count II of the information alleging the offense of Theft Under $300.00. You will be placed on 24 months conditional discharge, standard terms to apply. Ordered to pay a fine of $1,000.00, plus costs. Restitution of $930.72 to Boatmen's Bank. Both of those are to be paid immediately. Restitution in the amount of $6,000.00 to be paid to Illini Bank with the bond applied. Balance due in 24 equal monthly installments beginning March 1st. You also will be sentenced to 26 days in the Montgomery County Jail with credit for 26 days served. Judgment will be entered on the plea.

You have a right to appeal this decision. If you want to appeal you have to file a written motion to withdraw the plea of guilty within 30 days of today setting forth the grounds for that withdrawal. You waive any issue or claim of err not raised in the motion to withdraw in the event of a later appeal.

You understand your rights to appeal?

MR. ANDERSON: Yes, sir.

THE COURT: Okay, you will get a copy of the Order of Conditional Discharge in the mail. You need to discuss it fully with your attorney so you fully understand the terms and the obligations you are under.

MRS. DOBRINIC: Your Honor, I have prepared an Order in advance. Counsel has had a chance to go over it with his client. If we could have it signed at this time and we will give him a copy here in open court.

THE COURT: Okay.

MRS. DOBRINIC: Thank you, your Honor.

**HEARING CONCLUDED**

STATE OF ILLINOIS
MONTGOMERY COUNTY

I, TED MERANO, Official Court Reporter in and for the Fourth Judicial Circuit, do certify the foregoing to be a complete and accurate transcript of the Negotiated Plea Hearing of the defendant, Benjamin Anderson, No. 93-CF-10, which was held on the 12th day of January 1995, at the courthouse in Hillsboro, Montgomery County, Illinois, before the Honorable David W. Slater, one of the Associate Circuit Court Judges of the Fourth Judicial Circuit.

Date: 5-6-96

Enter: S/TED MERANDO
TED MERANO - CSR

STATE OF ILLINOIS
MONTGOMERY COUNTY

PEOPLE v. ANDERSON
No. 93-CF-10

AND THE COURT having examined the same and being satisfied with the correctness thereof cloth hereunder sign and order said transcript of the Negotiated Plea Proceedings held on the 12th day of January, 1995, to be filed as a part of the record in said cause on appeal.

Dated: 8 / 21 / 97

Enter: S/David W. Slater
JUDGE DAVID W. SLATER

IN THE CIRCUIT COURT
OF THE
FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ILLINOIS

FILED
JAN 12 1995
ROY HERTEL
CIRCUIT COURT CLERK

PEOPLE OF THE STATE OF ILLINOIS

vs. No. 93 CF 10 Count II

Benjamin M. Anderson aka
Terry L. Cain aka Buddy Blaylock

## JURY WAIVER AND PLEA OF GUILTY

And now, this 12th day of January, 19 95, before the Honorable Judge David Hoker, comes the above named Defendant, and enters his or her plea of guilty to ONE COUNT of an Information charging:

THEFT (under $ 300.00)

The Defendant is first admonished by the Court that the punishment for such offense is **a term of incarceration in the county jail of up to 364 days, and/or a fine not to exceed $1000.00, or both, up to those maximums**. The Defendant is further advised by the Court that the Defendant is entitled to a trial, either by the Court or by a Jury.

The Defendant still persists in his or her plea of guilty and states that he or she is 49 years of age, and in his or her own proper person, waives trial by the Court or by a Jury in the above entitled cause and requests the above named Judge of the Circuit Court to accept his or her plea of guilty and to enter judgment on said plea and fix the penalty, as provided by law, without the intervention of a Jury.

X/ s/Benjamin M. Anderson
Defendant